



No. 2210080

Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN

NOAH ALTER, JARRYD JAEGER,
COOPER ASP and THE FREE SPEECH CLUB LTD.

Plaintiffs

AND

THE UNIVERSITY OF BRITISH COLUMBIA and
HIS MAJESTY THE KING IN RIGHT OF BRITISH COLUMBIA

Defendants

NOTICE OF APPLICATION

Names of applicants: Noah Alter, Jarryd Jaeger, Cooper Asp, and the Free Speech Club Ltd.

To: The University of British Columbia and His Majesty the King in Right of British Columbia

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on 01/30/2025 at 9:45 am for the order set out in Part 1 below.

The applicants estimate that the application will take 1.5 hours.

☐ This matter is within the jurisdiction of an associate judge.

☒ This matter is not within the jurisdiction of an associate judge.

PART 1: ORDER(S) SOUGHT

1. An order pursuant to *Rule* 13-1(14) reviewing the order as settled by Registrar Gaily on December 10, 2024, and varying it to conform to the form attached hereto at Appendix "A", by inserting, after paragraph 1:

1.1. In particular, the following paragraphs are struck from the NCC:

a. Part 1: Statement of Facts – paragraphs: 5; 7, 11-14, 16-25, 28, 66-73, 74(c), 82(b);

b. Part 2: Relief Sought – paragraphs: 4(a)(iii)-(v), 4(b), 5(a)(iv)-(vi), 5(b), 6(a)(iv)-(vi), 6(b), 7(a)(iv)-(vi), 7(b); and

c. Part 3: Legal Basis – paragraphs 1(f)-(i).

2. Such further and other relief as counsel may advise and this Honourable Court may deem just.

PART 2: FACTUAL BASIS

3. On March 22, 2024, His Majesty the King in Right of British Columbia (the “**Province**”) applied to strike out the part “against” the Province of the Amended Notice of Civil Claim filed in this action on March 13, 2024 (the “**NCC**”) under *Rule* 9-5(1)(a), to deny leave to amend, and to dismiss the action against the Province “and removing the Province from the style of cause.”

Notice of application filed March 22, 2024 (“**Strike Application**”)

4. On April 12, 2024, in response to the plaintiffs’ application for leave to amend, the Province replied that the “Province’s application to strike only impacts the plaintiffs’ *Charter* claim.”

Application response filed April 12, 2024, at Part 5, para 2.d.

5. On April 12, 2024, the Province provided written submissions in which it particularized what parts of the NCC it requested be struck “if the Court finds that the *Charter* does not apply to UBC’s Actions,” (the “**Province’s Proposed Terms**”) being those paragraphs referenced above at Part 1, paragraph 1 (the “**Alleged Defects**”).

Affidavit #1 of Ashley Sexton, filed January 2, 2025 (“**Sexton Affidavit**”) at Exhibit “B”

6. In the hearing on the Strike Application, counsel for the plaintiffs advised that the application for leave for an amendment would not be pursued if the court struck allegations because they were found to be substantively defective but would be pursued if the court struck allegations because they were found to be technically defective.

Sexton Affidavit at Exhibit “A”

7. On June 4, 2024, Greenwood J. rendered judgment on the Strike Application (the “Reasons”) and:
- a. at paragraph 1, confirmed that the plaintiffs’ claim against the Province (which the Province sought to strike) included the allegations that the *Canadian Charter of Rights and Freedoms* (the “**Charter**”) applies to the University of British Columbia (“UBC”), which allegations are included within the Alleged Defects;
 - b. at paragraphs 5, 23 and 35, found that the *Charter* did not apply to UBC’s actions because, *inter alia*, the “substantive claim that the *Charter* applies to the action of UBC is not legally sustainable in light of the authorities;”
 - c. at paragraph 67, granted the application as follows:

The application to strike the pleadings against the Province under Rule 9-5(1)(a) is allowed and the claim against the Province is struck. As the defects in the pleadings go to substantive issues rather than formal defects or the manner in which the pleadings are drafted, I would grant the motion to strike without leave to amend the notice of civil claim.

Alter v The University of British Columbia, 2024 BCSC 961

8. Following the Reasons, both defendants and Greenwood J. expressed the view that the plaintiffs’ *Charter* claims against, both, the Province and UBC had been struck in the Reasons:
- a. The Province objected to the form of order containing its own Province’s Proposed Terms but stated that:

It will, of course, be open to the plaintiffs to amend their claim to comply with Justice Greenwood’s order ...;

Affidavit of Ashley Sexton, filed November 5, 2024, at Exhibit “C” (“**Service Affidavit**”)

- b. In costs submissions, UBC sought costs payable forthwith, arguing the *Charter* claims against UBC had not survived the Strike Application;

Sexton Affidavit, at Exhibit “C” at paras 37 and 38

Sexton Affidavit, at Exhibit “D” at para 36

- c. In Greenwood J.’s judgment on costs, UBC’s request (for costs payable forthwith) was denied as follows:

I would not draw the conclusion that the matter is unlikely to go to trial. There is a separate action for breach of contract that is unaffected by the court's ruling on the strike application ...

Alter v The University of British Columbia, 2024 BCSC 1879 at para 32

9. The plaintiffs filed an appointment to settle the order, which was heard before Registrar Gaily on December 10, 2024. The order, as settled by the Registrar, did not contain the Province's Proposed Terms and struck no part of the NCC. Rather, the order only (effectively) dismissed the action as against the Province, leaving all pleadings including all "substantive defects" entirely intact.

Service Affidavit

Order of Greenwood J. dated June 4, 2024, and entered December 10, 2024 (the "**Impugned Order**")

10. In a procedural hearing before the British Columbia Court of Appeal, the Province communicated its intention, should the Province successfully resist the inclusion of its own Province's Proposed Terms in the order, to argue that the appeal should be dismissed without considering the question of the *Charter's* application to UBC, citing the rule that appeals are from orders and not reasons.

Alter v British Columbia, 2024 BCCA 396, at para 37

11. On December 20, 2024, Greenwood J. declined to hear the within matter.

Sexton Affidavit at Exhibit "E"

PART 3: LEGAL BASIS

12. The Strike Application is brought under *Rule* 9-5, under which the court:
 - a. "... may order to be struck out or amended the whole or any part of a pleading ...," meaning the court may delete or alter the allegations contained in the pleading; and then
 - b. "... may ... order the proceeding to be ... dismissed ...," meaning the court may then dispose of the action.
13. Both the Reasons and the Impugned Order "strike" the NCC but do not "dismiss" the action – although to strike all matters pleaded in a notice of civil claim against a defendant without leave to amend functions, both, as a striking out of the whole or part of a pleading and as a dismissal.

14. The matters pleaded in the NCC which were struck out in the Reasons are “the defects in the pleadings [which] go to substantive issues” being “the claim against the Province” which includes:

- a. the allegations that the *Charter* applies to the UBC (see paragraph 7.a, above) including the:

... vast amount of detail relating to the manner in which UBC interacts with the government, the composition of its board of directors and senate, various reports that UBC is required to undertake under provincial legislation, aspects of its public accountability, its financial dependence on the provincial and federal governments, and oversight in various areas of its operations.

Reasons at paras 5 and 23

- b. all other allegations relating to the Province,

Reasons at paras 5 and 36 to 66

which struck pleadings are the Alleged Defects.

15. The Court, in settling an order under *Rule* 13-1, is to interpret the reasons so as to distill them into an enforceable order.

Bankruptcy of P., 2000 BCSC 71, at para. 7

16. Therefore, the Reasons can only be reasonably interpreted to strike the “substantive” defects identified in the reasons, being the Alleged Defects.

17. It is a mistake to merely pluck vague and uncertain words from the reasons.

Halvorson v British Columbia (Medical Services Commissions),

2010 BCCA 267 (“*Halvorson*”) at para 19

18. It is a mistake, therefore, to merely pluck the phrase “strike the pleadings against the Province” into the Impugned Order, because this leads to uncertainty as to what “pleadings” are, in fact, struck.

19. Such uncertainty is already manifest. The Province claims the Impugned Order requires amendments to the NCC, but the Impugned Order says no such thing. The effect of the Impugned Order, as settled, appears to be a dismissal of the action against the Province with nothing struck from the NCC and, therefore, no effect on the plaintiffs’ *Charter* claims against UBC. However, neither the defendants nor Greenwood J. believe this is the effect of the Impugned Order.

20. The purpose of an order, as opposed to reasons, is to give complete and enforceable directions which are obvious on their face, without resort to extrinsic sources like reasons, to those who must comply with them. The order should be expressed in plain and simple language so that “anyone picking it up and reading it would understand exactly what was to happen.”

Halvorson at para. 18

Starink v Tidy, 2007 BCSC 567, at para. 7

21. The defendants and Greenwood J. interpret the Reasons so as to strike the plaintiffs’ *Charter* claims against, both, the Province and UBC. However, the defendants oppose a form of order that says so. The Province and UBC prefer the form of the Impugned Order which does not set-out “what is to happen.” While the Province insists the plaintiffs must, “amend their claim to comply with Justice Greenwood’s order,” the defendants object to an order identifying the required amendments.
22. The order should set-out “what is to happen” by identifying the “substantive” defects which were struck: the Alleged Defects.
23. The Province has admitted the benefit it seeks to derive from the vaguely-worded Impugned Order. It wishes to urge the British Columbia Court of Appeal to refuse the appeal without reconsidering Greenwood J.’s conclusion that “the substantive claim that the Charter applies to the actions of UBC is not legally sustainable in light of the authorities.”

Reasons at para. 5

24. This argument depends on the vaguely-worded Impugned Order because appeals are generally “from orders” not “from reasons.”

Henderson v Mawji, 2020 BCCA 43, at para. 10

25. Independent of the form of order, however, reasons can bind parties under the doctrine of “issue estoppel” if an issue which is determined in the reasons is fundamental to the decision arrived at.

Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44, [2001] 2 SCR 460, at paras. 24 to 25

26. Through artifice in drafting, the defendants seek to deny the plaintiffs the right to appeal an issue which, according to the defendants and Greenwood J., has been decided against them (“that the *Charter* applies to the actions of UBC”) and which necessitates unspecified amendments to the NCC.

27. The court retains inherent jurisdiction to prevent the abuse of its processes, including processes which are “unfair to the point that they are contrary to the interest of justice” and the misuse or perversion of the court's process for an extraneous or ulterior purpose.

Moulton Contracting Ltd. v. British Columbia, 2013 SCC 26, at para 39

Waryk v. Bank of Montreal (1991), 1991 CarswellBC 453, 13 W.A.C. 81, at para. 59

28. To grant the vaguely-worded order requested by the defendants would be to facilitate an abuse of process and would work a miscarriage of justice.
29. The order should be settled, therefore, to expressly strike the Alleged Defects.
30. An application under Rule 13-1(14) is a *de novo* application to settle the terms of an order.

Will Millar Associates Co. v Millar, 1995 CanLII 2176, (1995), 44 C.P.C. (3d) 398, at para. 5

Morton v Harper Grey Easton, 1997 CarswellBC 1969, at para. 14

Murphy v Wynne, 2012 BCCA 113, at para. 9

Bertolami v Money Family Projects Ltd., 2020 BCSC 1351, at para. 10

PART 4: MATERIAL TO BE RELIED ON

31. Notice of application filed March 22, 2024.
32. Application response filed April 12, 2024.
33. Affidavit of Ashley Sexton made November 5, 2024.
34. Affidavit of Ashley Sexton filed January 2, 2025.
35. Such further materials as counsel may advise, and this Court may permit.


TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

- a. file an application response in Form 33,
- b. file the original of every affidavit, and of every other document that
 - i. you intend to refer to at the hearing of this application, and
 - ii. has not already been filed in the proceeding, and

- c. serve on the applicant 2 copies of the following and on every other party of record one copy of the following:
 - i. a copy of the filed application response;
 - ii. a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - iii. if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

January 2, 2025

 Date



 Signature of Glenn Blackett, lawyer for applicants

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms

.....

Date: [dd/mm/yyyy].....

.....
 Signature of ☐ Judge ☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

This **NOTICE OF APPLICATION** is prepared by Glenn Blackett, Barrister, of Blackett Law, whole place of business and address for service is 600, 1285 West Broadway, Vancouver, BC V6H 3X8; Telephone: (587) 674-3445; Email Address: glennblackett@outlook.com.

APPENDIX "A"

No. S-2210080
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

NOAH ALTER, JARRYD JAEGER, COOPER ASP,
and THE FREE SPEECH CLUB LTD.

Plaintiffs

and

THE UNIVERSITY OF BRITISH COLUMBIA and
HIS MAJESTY THE KING IN RIGHT OF BRITISH COLUMBIA

Defendants

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE JUSTICE GREENWOOD } 4/June/2024

ON THE APPLICATIONS of the defendant, His Majesty the King in right of British Columbia (the "Province"); and of the plaintiffs, Noah Alter, Jarryd Jaeger, Cooper Asp and The Free Speech Club Ltd., coming on for hearing at Vancouver, British Columbia, on May 7 and 8, 2024, and on hearing Karin Kotliarsky, Emily Lapper, and Sergio Ortega, counsel for the defendant, the Province; Glenn Blackett, counsel for the plaintiffs, Noah Alter, Jarryd Jaeger, Cooper Asp, and The Free Speech Club Ltd.; and Natalia Tzemis, counsel for the defendant, The University of British Columbia; AND JUDGMENT being reserved to this date:

THIS COURT ORDERS that:

1. Pursuant to R. 9-5(1)(a) of the Supreme Court Rules, the Amended Notice of Civil Claim filed March 13, 2024 (the "NCC") as against the defendant, His Majesty the King in Right of the Province of British Columbia, is struck.
2. In particular, the following paragraphs are struck from the NCC:
 - a. Style of Cause: the words "and Her Majesty the Queen in Right of British Columbia;"

- b. Part 1: Statement of Facts – paragraphs 5, 7, 11-14, 16-25, 28, 66-73, 74(c), 82(b);
 - c. Part 2: Relief Sought – paragraphs 4(a)(iii)-(v), 4(b), 5(a)(iv)-(vi), 5(b), 6(a)(iv)-(vi), 6(b), 7(a)(iv)-(vi), and 7(b);
 - d. Part 3: Legal Basis – paragraphs 1(f)-(i).
- 3. The plaintiffs’ application to amend the NCC pursuant to R. 6-1(1) is dismissed.
 - 4. The parties are at liberty to address the issue of costs in writing by July 4, 2024.
 - 5. This form of order may be signed electronically and in counterpart.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS
BEING BY CONSENT:

Signature of **Glenn Blackett**,
Counsel for the Plaintiffs,
Noah Alter, Jarryd Jaeger, Cooper Asp, and
The Free Speech Club Ltd.

Signature of **Karin Kotliarsky**,
Counsel for the Defendant,
His Majesty the King in Right of British Columbia

Signature of **Natalia Tzemis**,
Counsel for the Defendant,
The University of British Columbia

By the Court.

.....
Registrar